IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4932 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASWANTLAL R SHAH - Petitioner(s)

Versus

DEPTT OF TELECOMMUNICATIONS - Respondent(s)

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Appearance :

MR RITURAJ M MEENA for Petitioner(s) : 1,

MR MM TIRMIZI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/10/2005

ORAL JUDGMENT

1. By way of this petition, the petitioner has prayed the following reliefs:

(a) Your Lordship may be pleased to issue a writ of mandamus and or any other appropriate writ, order or direction in the nature of mandamus for quashing and setting aside the order passed by respondent-authority directing the petitioner to clear the dues of Madhuben R.Shah and in case of non-payment, the disconnection of the telephone connection of the petitioner as shown at Annexure-A to this petition.

(b) Pending admission, final hearing and disposal of the present petition, Your Lordship may be pleased to stay the disconnection of the Telephone No.460313 and 7416065 at Ahmedabad which are in the name of petitioner.

(c) To pass such other and further orders which are deemed to be fit in the interest of justice.

2. The learned advocate for the petitioner has produced a copy of the impugned order which has been addressed by Telecom Department to Madhu and Co.Prop.Madhuben R.Shah, passed by the respondent authority dated 30.12.1996 is produced at Annexure “A” to the petition which reads as under:

"Sub: Recovery of outstanding dues of Tele.No.6562825 (Disconnected).

Following 3 bills are outstanding against your Tele No.6562825 (disconnected. Action is being taken to close and recover the line in due course bill dated 5.6.1996 Rs.9330/-, 5.8.1996 Rs.2,014/- and 5.10.1996 Rs.388/-.

You are, therefore, requested to arrange the payment within 7 days failing which your office Tele No.460313 in the name of Jaswantlal R.Shah at office address and another your Resi. Line No.7416065 is liable for disconnection under rule 443 of ITR Pl.Note.

You are once again requested to arrange for payment easy."

3. Heard Mr.Meena, learned advocate for the petitioner and Mr.M.M.Tirmizi, learned advocate for the respondent.

4. Mr.Meena, learned advocate for the petitioner has relied upon the decision of the Andhra Pradesh High Court in the case of Y.Pridhvi Kumar Vs. The General

Manager, Telecom District, Hyderabad reported in AIR 1993 Andhra Pradesh 131, more particularly para 2 which reads as under:

> “Mr.V.Sriranga Rao, the learned Additional Standing Counsel submits that inasmuch as there are arrears outstanding against the telephone of petitioners mother, the petitioner is vicariously liable for the said arrears and as such, for non-payment of the arrears outstanding against the petitioners mother, the telephone of the petitioner can be disconnected. I apprehend that I cannot accede to this contention of the learned standing counsel for the Central Government for the simple reason that the petitioner and his mother are having two different telephone and as citizens of India, they are entitled to be subscribers of telephones independently and merely because there is a relationship of mother and son and as the mother has defaulted in payment of amounts to the respondent, no liability can be fastened to the petitioner and neither the statue nor the rules framed thereunder empower the authorities to disconnect the telephone for the default committed by the petitioners mother. Even, if any statute makes such an imposition, the same would be arbitrary and unreasonable and be a clear infraction of the fundamental rights guaranteed under Article 14 of the Constitution of India.”

5. I am of the opinion that for the dues of other subscriber, the respondent authority has no jurisdiction to disconnect the phone of the petitioner, they can disconnect the same provided that if the dues of the petitioner himself is outstanding or the partnership firm where he is partner. But in any case,

he has no connection but blood relation, the telephone line may not be disconnected.

6. In that view of the matter, the impugned order dated 30.12.1996 passed by the respondent authority is quashed and set aside. This Court has protected the petitioner from 1997. In view of the same, the petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.S. Jhaveri, J.)

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